

To whom it may concern,

I received a copy of the proposed court rules in ADM File No. 2012-03 back in May of this year. After printing the document, I began to read and make notes. Several months have passed, giving me adequate time to reflect on the proposed changes or additions to present court rules. My questions, comments and concerns are listed in the attached file. I have included the content of this email in the file, to show that my comments and concerns are based on my experience as an interpreter serving in the courts in the State of Michigan.

As a matter of background, I worked in the courts in Western Michigan, all the way from the local district courts to the 3 US District courts in the Western District of Michigan. I began in May or June 1991 and worked until November 1993, when we took a position overseas. At the time I left the courts, there were no certification examinations available. Rumor had it that they were soon to come, but I left before they were developed.

We returned to the US in 2006 and I began interpreting in the courts again in November of that year. At that point, both the State of Michigan and the US District Courts offered certification examinations and both had a number of certified interpreters. After several years of study, preparation, and interpretation experience in the courts, I too became a MI Certified Court Interpreter.

There has been talk, for over a year now, of the state moving to a position of requiring interpreter certification. I agree wholeheartedly with this philosophy. It is true that the certificate itself does not make one a better interpreter. The amount of study and practice required to pass the exam, however, will help an interpreter to become better and achieve a higher level of skill.

One topic that was not really mentioned in the proposed court rules is the idea that all interpreters who are not yet certified should be actively working towards achieving certification. Some courts, like the one in Flint, have a tier system for interpreters. Those who are not certified are required to take courses, attend seminars and workshops, etc. with the goal of becoming certified. They are paid according to their level of achievement in the system.

If the Michigan Supreme Court should adopt the rules presented in ADM 2012-03, there needs to be a requirement that all interpreters who are not yet certified but rated as "qualified" should be actively taking steps towards state certification. They should all take the written English Proficiency exam until they pass it. If they are not able to pass this (free) exam that is offered 2 times per year, are they really qualified to interpret in our courts?

After passing the written exam, all non-certified interpreters they should be required to take the oral exam at least once a year. An interpreter who is not willing to put forth the effort to at least attempt to pass the oral exam, after a grace period established by the state court administrator, should not be permitted to continue interpreting until the exam requirement is met. Maybe a period of time could be established for the interpreter to pass at least 2 of the 3 sections of the oral test. Many other professions require this: electricians, plumbers, court reporters, physical and occupational therapists, teachers, etc. Should the courts require anything less of foreign language interpreters?

Most of the foreign language interpreters who work in the courts in Michigan have invested much time, effort, and even money spent on examination fees in order to become MI Certified court interpreters. They view court interpretation as a profession requiring high standards and a certain degree of skill. There is a growing concern that, in an attempt to cut costs, the courts will resort to using non-certified interpreters solely because they are less expensive. The time and efforts of those who worked hard to achieve certification will be undermined by allowing less qualified interpreters better access to the courts, to the exclusion of those who have been proven to be qualified.

Thank you for allowing us the opportunity to read and review the proposed changes. Thank you for considering our views on these important issues. I need to thank you most of all for reading the attached document. It may look a little long but it is broken into sections similar to the original document.

Donna Bos  
MI Certified Court Interpreter



Rule 1.111 Foreign Language Interpreters

**(A) Definitions**

**(A)(2)(b) “met all requirements established by the state court administrator”**

What are these requirements? Are they the requirements established under the existing code or the proposed code? This wording also appears in sections (5)(a)(ii), (5)(b)(ii), and (5)(c)(ii).

**(A)(5)(a)(iii) “the person has been determined by the court after voir dire to be competent”**

What objective means will the court employ to determine, after voir dire, if the interpreter is competent to provide interpretation services?

**(A)(5)(b) “works for an entity that provides in-person interpretation services”**

Does that entity have to prove or certify that the interpreter who works for them is qualified? How will it do that? Will this become a self-serving venture? Will the court seek to confirm the interpreter’s claim to be competent or just take the interpreter at his/her word?

Alternative A

**(B) Appointment of a Foreign Language Interpreter**

**(B)(1) “the court determines such services are necessary”**

How will the court determine this?

**(B)(3) “the court shall conduct an examination of the person on the record”**

How will the court do this if the person truly doesn’t understand or speak English? Will the court appoint a temporary interpreter for this examination of the Limited English Proficient person on the record? Also, in some cases, it will be very hard for the foreign language interpreter to participate remotely, due to glitches in technology, static and background noise, the tonal variations of some languages, difficulty or limitations of some parts of the voice being lost in the transmission over phone lines, etc. How will the court test the qualifications of *that* interpreter? Will this delay the case unduly? Will this procedure overlook or exclude local interpreters?

Alternative B

**(B)(1) “The court shall assign an interpreter”**

Is there any significance in the use of “assign” instead of “appoint”, which is the term used in Alternative A in (B)(1) and Alternative C in (B)(1)?

Alternative C

**(B)(1) “If the case . . . is one in which the court would be required to appoint an attorney for a person . . . .”**

Do only people who have a court-appointed attorney get the assistance of a court appointed interpreter? Do only the people who commit serious crimes have the right to a court-appointed interpreter in order to understand and actively participate in their legal cases? Doesn’t Title VI of the Civil Rights Act of 1964 give all Limited English Proficient people the right to equal access and equal participation in our courts and other institutions?

Taken to an extreme, this could potentially eliminate the assistance of foreign language interpreters in all of our state’s district courts, which deal primarily with misdemeanor cases. Since the felony cases are only treated temporarily in the district courts, will the interested parties only have foreign language interpreter at the point at which the case is bound over to the circuit court?



Also in (B)(1), how will the court determine whether the service of an interpreter is necessary or not? Again, this could easily bog down the court system and prolong many cases unnecessarily while the court is trying to determine if the individual truly needs an interpreter or not.

**(B)(3) “to determine whether the services of a foreign language interpreter are necessary . . . the court shall conduct an examination of the person on the record.”**

Will the court be required to get a qualified interpreter to help determine if the person gets an interpreter or not? If this procedure is done on the record, wouldn't the court desire to have a qualified interpreter make that determination? Why should an unqualified person be able to undercut and replace the professional interpreter who is qualified (and hopefully certified)? If the interpreter to be used to determine if the LEP needs an interpreter or not is not qualified to provide official interpretation services, how are they qualified to determine if interpretation services are needed? Wouldn't they be tempted or motivated to try to avoid recommending the need for professional interpreters, to try to keep the jobs for themselves? If we consider other professions, do we allow under-qualified medical personnel (nurses for example) to refer patients to other doctors or to specialists?

Another issue that is concerning in this section is the suggestion of using a foreign language interpreter who participates remotely. In addition to the questions and comments made in Alternative A (B)(3), the question is raised again about how the court will test the qualifications of the interpreter who participates remotely. There are companies who provide interpretation services by phone. Who are their interpreters? Where are they? Are they certified by any government agency or just “approved” or “qualified” by the agencies that employ them? What about the rules of privacy and confidentiality that in-person interpreters, certified by the state administrative office, are sworn to uphold? Many times interpreters participating remotely are not even put under oath!

#### **(C) Waiver of Appointment of Foreign Language Interpreter**

Of concern is the fact that a certified or qualified interpreter is not required for a LEP person to waive the right to the interpreter. It would seem that this is one of those moments when certified or at least qualified interpreters are necessary to ensure the LEP truly understands the decision he/she is making. Also, the same objections to the use of interpreters participating remotely apply here too.

#### **(D) Recordings – “The court may make a recording . . . .”**

Doesn't the court already have the option of recording anything said by the foreign language interpreter or LEP person? Don't the courts already record everything said on the record, by all parties, including the foreign language interpreter?

#### **(E) Avoidance of Potential Conflicts of Interest**

##### **(E)(1)(d) Avoidance of Potential Conflicts of Interest – when “the interpreter is a law enforcement officer”**

Does this apply only to using law enforcement officers in court? Are law enforcement officers allowed to use other, supposedly bilingual, law enforcement officers as “interpreters” during the investigative stage of their cases?

##### **(E)(1)(f) “the appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings”**

In what ways could or would using an interpreter **not** serve to protect a party's rights or ensure the integrity of the proceedings? It would seem that using an interpreter would protect a party's rights and the integrity of the proceedings and would actually enhance the protection of a party's rights and would further ensure the integrity of the proceedings.

##### **(E)(1)(h) “the appointment of an interpreter creates the appearance of impropriety”**

How would appointing an interpreter “create the appearance of impropriety?” Are there cases in Michigan courts where this has happened?

##### **(E)(2)(a) “court employee may interpret legal proceedings . . . .” – This is a very good section!**

#### **(F) Appointment of Foreign Language Interpreters**



**(F)(1) “the court shall appoint a certified foreign language interpreter whenever practicable . . . not reasonable available”**

What do these terms mean? How hard and/or how long should the court look for a certified interpreter? Is there a certified language interpreter available on stand-by? Is one available within 1 hour? Is one available within 10 miles of the court building? Will the court personnel make only one phone call looking for a certified interpreter and then move on to anyone they can find? More than once a court employee has said, “I called the agency to ask for an interpreter but no one answered.” When asked if said employee made a second call to the agency or to another interpreter, the answer was, invariably, “no.”

Some courts have many cases needing interpreters. Some cases require multiple court hearings just to finally close the case. Some courts do not track their cases well enough to know ahead of time when an interpreter will be needed. Even in the courts that do track the cases well, some things fall through the cracks. Should the LEP person be subjected to the “luck of the draw”, the untested skill level of whatever interpreter the court may find, just because the court is in a hurry to finish a hearing or didn’t want to spend much time looking for a certified interpreter? Many of the major cities in Michigan have at least one certified interpreter within a reasonable driving range. What protects the LEP person from the court just grabbing anyone quickly or not really trying to find a certified or even a qualified interpreter?

**(F)(2) “the court determines through voir dire” that a non-certified, non-qualified interpreter is “capable of conveying the intent and content of the speaker’s words”**

How does the court assess a person’s ability to convey intent and content of a speaker’s words without knowing the LEP person’s language?

**(F)(3) “the court shall appoint a single interpreter for a case”**

Does this mean one interpreter at a time or a single interpreter to serve at all hearings related to the specific case? The paragraph does allude to the fact that the case may be prolonged or that it may need more than one interpreter. Given the way that most courts schedule their cases, it may not be at all practical to keep the same interpreter for all proceedings on a particular case. There are some benefits, but sometimes scheduling is such that it is not practical.

#### Alternative A

**(F)(4)(a) “the court may order the defendant to pay the interpreter costs”**

Will the interpreter have to wait for the defendant to pay? How will the interpreter collect the money from the defendant? Will the court pay the interpreter in a timely manner and then collect the interpreter costs from the defendant by adding to the list of fines and court costs, much in the same way the courts add the state fees, CVR fees, and court-appointed attorney fees?

**(F)(4)(b) “the court may order a party to reimburse the interpreter costs”**

Again, when would this take place? Would it be before the hearing? Would it be done right after the hearing? Will the interpreter have to wait for payment? Already, payments received from the courts can take 30 or even 60 days.

**(F)(4)(c) “the court shall order those costs waived or suspended until the conclusion of the litigation”**

Would the courts still pay the interpreter and collect from the party? Would the interpreter have to wait for the conclusion of a case, which could take months or possibly years?

Of the 3 alternatives, this one is the least desirable.

#### Alternative B

***This is the best of the 3 alternatives. The court could, and in some cases should, ask for reimbursement from parties who requested an interpreter and then failed to appear at the hearing themselves. In some cases, this happens quite often. The attorney is present and the interpreter is present. Unless the LEP party can show good cause for failing to appear at a hearing where he/she has requested the services of a foreign language interpreter, he/she should reimburse the court for missed hearings.***



## Alternative C

This alternative is acceptable, fairly good even. As mentioned previously, it does not seem unreasonable to tax or charge a person for interpreter costs.

### **(F)(4)(a) “the court shall not impose interpreter costs on that person until the conclusion of the litigation”**

Again, the interpreter should be paid in a timely manner and not have to wait for payment for hours worked until the end of litigation, which could take quite a while.

### **(G) Administration of Oath or Affirmation to Interpreters**

This section is very well written. Notably absent is the mention of interpreting literally or verbatim, since accurate translations often preclude literal or verbatim renderings.

## **Rule 8.127 Foreign Language Board of Review and Regulation of Foreign Language Interpreters**

### **(A) Foreign Language Board of Review**

This is a very good idea. Ideally, the Supreme Court would appoint members representing all or major regions of the state, not just the east side.

### **(B) Responsibilities of Foreign Language Board of Review**

Again, very good proposal!

#### **(B)(3)(d) “requirements for interpreters . . . to maintain their certification”**

What are these requirements? Does the proposed rule refer to the registration and renewal mentioned in MCR 1.111(A)(2) only, or are additional requirements implied?

#### **(B)(3)(e) “requirements for entities that provide interpretation services by telecommunications equipment to be qualified”**

Does this refer to entities like “Language Line”? In what way will they be required to qualify their interpreters or to verify the qualification of their interpreters? Will anyone monitor the services rendered by these entities to ensure that they are indeed providing qualified interpreters? Many interpreters in Michigan have had occasion to hear the interpretation provided by some of the interpreters from these entities and have found them sorely lacking. The most important complaint against them is their lack of knowledge of legal terminology.

### **(C) Interpreter Registration**

Once again, this is an excellent proposal. Professionals in many other fields are required to register and pay a registration fee. The amount is reasonable and affordable. This is an excellent way to increase the level of professionalism in the field of foreign language interpretation in the courts. Paying a registration fee helps emphasize the fact that court interpretation is and should be a profession, not a hobby.

#### **(C)(2) “entities that *employ* a certified foreign language interpreter . . . or a qualified foreign language interpreter”**

Does this refer to interpreters that are legally employees of the entity (with W-2 forms) or to interpreters that are legally subcontractors of the entity (with W-9 and 1099 forms)? The term “employ” is also used in (D)(10).

### **(D) Interpreter Misconduct**

This section is well written and appears fair.